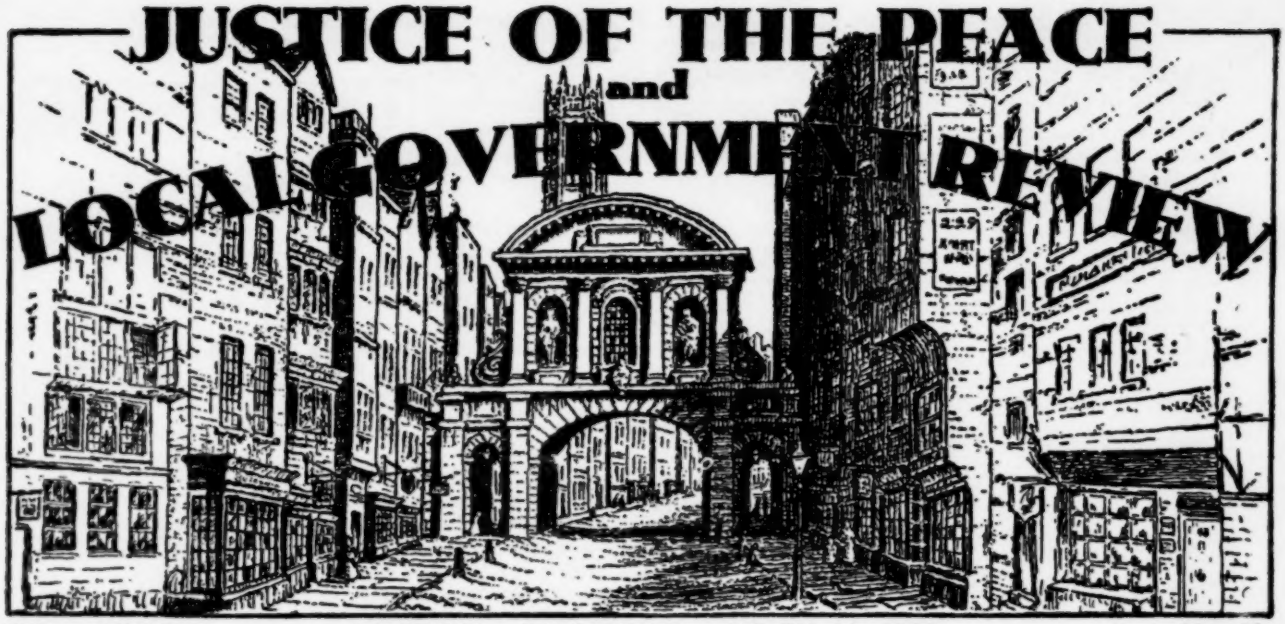

VOL. CXVII LONDON: SATURDAY, MARCH 21, 1953 No. 12

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REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt* 10 *a.m. Thursday*

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note:* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

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APPLICATIONS are invited from Solicitors with experience of Local Government law and administration for the appointment of Assistant Solicitor, at a commencing salary within A.P.T. Grades VIII to IX (£760—£935) according to experience.

Candidates must be capable and experienced advocates and must be prepared also to assist in the general legal and administrative work of the office.

Applications, with copies of two recent testimonials, should reach the undersigned not later than March 28, 1953.

R. EDGAR PERRINS,
Town Clerk.

Town Hall,
Southport.

LANCASHIRE MAGISTRATES' COURTS COMMITTEE

Colne Borough and Colne County Petty Sessional Divisions

APPLICATIONS are invited for the appointment of a Magisterial Assistant at a commencing salary within the range of Grade A.P.T. II, £495 × £15—£540. The appointment will be superannuable and subject to medical examination.

Applications, giving details of experience, should be forwarded to me not later than April 10, 1953.

T. S. M. BADGERY,
Clerk to the Justices.

82, Albert Road,
Colne.

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ASSISTANT SOLICITOR required. Salary within £625—£785 (plus London Weighting) according to qualifications (Grade A.P.T. V(a)/VII).

Further details and form of application (returnable by March 30, 1953) from Town Clerk, Town Hall, East Ham, E.6.

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APPLICATIONS are invited from Solicitors or Barristers having wide experience in local government law and administration for the appointment of Town Clerk at a commencing salary within the range of £1,150—£1,350 per annum, according to qualifications and experience, with four annual increments of £50.

The person appointed will be required to carry out all statutory and other duties devolving upon him. He may also be invited to accept the appointment of Clerk of the Peace for the Borough. An additional salary of £50 per annum will be paid in respect of this office.

The appointment will be subject to:

(*a*) The provisions of the Local Government Superannuation Act, 1937.

(*b*) A satisfactory medical examination.

(*c*) The conditions of service laid down by the Joint Negotiating Committee.

(*d*) Three months' notice in writing on either side.

Canvassing, directly or indirectly, will disqualify.

Candidates must disclose whether they are related to any member or senior officer of the Council.

If required, the Council will give all possible assistance towards the provision of housing accommodation for the person appointed.

Applications, giving particulars of age, qualifications, experience, previous and present appointments, with the names of three responsible persons as referees, endorsed "Town Clerk," to be delivered to the undersigned not later than March 25 next.

FRANK G. REEVES,
Town Clerk and Clerk of the Peace.

Town Hall,
King's Lynn.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

VOL. CXVII. No. 12 LONDON: SATURDAY, MARCH 21, 1953 Price 2s. 3d. (including Reports) Price 1s. 3d. (without Reports)

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NOTES of the WEEK

Short Sentences

It is fairly generally recognized today that short sentences of imprisonment rarely serve a useful purpose, and not infrequently do harm. Prison authorities are against them, because they feel that it is impossible to do anything constructive in a short time while the prisoner incurs a certain stigma among his friends and acquaintances, perhaps loses his job, and maybe concludes that prison, if not to be desired, is at all events not so bad as he had thought it would be. There may be occasions on which there seems to be no alternative to a short sentence, but generally they are to be deprecated. The alternative is not always a long sentence, of course. Some other form of sentence or order may be appropriate.

The Court of Criminal Appeal, which has sometimes felt constrained to increase sentences, recently gave a notable decision of quite a different kind. In *R.* v. *Fordham* (1953) (*The Times*, *March* 10), the Court substituted a probation order for a sentence of eight years' preventive detention passed by a court of quarter sessions. The Lord Chief Justice said the appellant had been the victim of short sentences, and this time he would be given a chance on probation for two years. The appellant was warned that if he broke his probation this might result in a sentence of eight years preventive detention or even more. If he committed further offences, the court would know he was incorrigible, and would protect the public from him for a long time.

It will be remembered that when a probation order is made on appeal it is to be deemed to have been made by the court whose decision was appealed against, by the provisions of s. 80 (5) of the Criminal Justice Act, 1948.

Interventions from the Bench

At p. 258 of *Stone* (1952), it is stated: "The presiding judge has an absolute discretion to ask any question whatever (*see* 40 Sol.J. 678). He should not take an undue part in the examination of witnesses, *Yuill* v. *Yuill* [1945] 1 All E.R. 183. It is considered justices have the same right and discretion."

This is a matter to be borne in mind by magistrates who may be tempted sometimes to intervene by asking questions or making observations while counsel or solicitor is conducting his case. Interventions are sometimes justifiable, but more often than not it is as well to leave an advocate, who has his instructions and who is developing his case as he thinks best, to proceed with as little interruption as possible from the magistrates.

The subject of interventions was dealt with by the Court of Criminal Appeal in *R.* v. *Clewer* (*The Times*, March 10), when a conviction was quashed on the ground that the defence had not had a fair opportunity, although the Court said that no one would for one moment impute to the judge any desire other than that a righteous verdict should be returned.

The Lord Chief Justice gave credit to counsel on both sides for having conducted their cases with complete propriety. The complaint of counsel for the defence was that, by reason of the frequency and nature of interruptions by the judge, he never had an opportunity of putting his defence fairly before the jury. Lord Goddard conceded that it might be difficult for a judge to treat a defence which seemed fantastic or devoid of merit with the same consideration as a defence not marked by those characteristics, but the more improbable the defence, the more difficult it was for counsel to discharge his duty to his client adequately. After counsel had been allowed to do his duty, the judge could deal with the case for the defence, and possibly demolish it, in his summing up.

In the magistrates' courts there are no juries, there is no summing up, and the magistrates have to fulfil the functions of both judge and jury. Nevertheless, what was said in *R.* v. *Clewer* can be applied very largely to proceedings in magistrates' courts, and the whole judgment of the Court of Criminal Appeal should be read and taken to heart.

Quashing Illegal Disqualification Without Quashing Conviction

Two cases raising the same point came recently before the High Court on applications for orders of *certiorari*. In each case justices had convicted a defendant of an offence against s. 12 of the Road Traffic Act, 1930. In neither case had the defendant been previously convicted of an offence under s. 11 or s. 12 of that Act so as to render him liable to be disqualified for more than the one month, which is the maximum period which may be imposed on a first conviction under s. 12 (*see* s. 12 (2)). In error the justices imposed disqualification in the one case for two, and in the other case for six months.

The case on which the two months' disqualification had been ordered came first before the Court. Lord Goddard, C.J., said that the order that the defendant be disqualified for two months for holding or obtaining a licence for driving a motor was an error on the part of the justices because, not having been previously convicted, the defendant could only have been disqualified for one month. His Lordship continued: "The Court therefore quashes the order of disqualification. We do not quash the conviction or the penalty because s. 6 (2) of the Road Traffic Act, 1930, points out that the order for disqualification is different from the conviction, and it expressly gives power to a disqualified person to appeal against the order of disqualification as if it were a conviction. That shows that it is something separate, and it is perfectly easy to sever that part of the order which deals with disqualification from that part of the

justices' adjudication which deals with the penalty. We cannot, in quashing the order for disqualification, substitute the right period, but there is no reason why we should quash that part of the order which deals with the penalty."

On the question of the costs of the application the Lord Chief Justice said that the Court could not give costs against the justices for making a mistake.

This case was that of *R.* v. *Droxford Justices, Ex parte Hale*, heard on January 22, 1953. The other case, *R.* v. *Abergavenny Justices, Ex parte Murdoch* was heard on the same day but no reasoned judgment was given on that case because the issue was similar. Again only the order for disqualification was quashed.

These are interesting decisions. It is obviously satisfactory, except to the defendants concerned, that the High Court found no reason to quash the remainder of the adjudication because of a mistake in what is a supplementary part of it. It seems in many ways a pity that the High Court could not substitute the appropriate maximum period of disqualification, but this does, of course, involve other considerations which we do not propose to deal with in this note.

We acknowledge with thanks the receipt of the information about these cases which has enabled us to prepare this note.

Maintenance Order : Fixing the Amount

In determining the amount of the weekly payment under an order made under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, the court is to have regard to the means both of the husband and the wife, Summary Jurisdiction (Married Women) Act, 1895, s. 5 and *see* the judgment of Lord Merriman, P., in *Ward* v. *Ward* [1947] 2 All E.R. 713.

In the recent case of *Klucinski* v. *Klucinski* [1953] 1 All E.R. 683, a husband who had admitted adultery and desertion was ordered by the justices to pay a weekly sum of 30*s.* a week for the maintenance of his wife. Evidence was given that his average weekly earnings were between £11 8*s.* and £12 16*s.* The justices found that his basic wage, excluding overtime pay, was between £8 and £9. On appeal, the Divisional Court held that the justices should take into account not only his basic wage but also his earning capacity and that to eliminate from their calculations overtime pay or the capacity to earn it was a misdirection in law.

Doubtless the wife was earning, which may account for the fact that the order was so small. However, the point of the case was that an order should be based upon actual earnings and not upon some lesser basic wage not representing his current earnings. If a man's position alters so that, by reason of the cessation of overtime or from some other cause his actual income is reduced, it is open to him to apply for a variation of the order. In *Klucinski* v. *Klucinski* the case was not sent back to the justices but the President said : " The obvious solution is to leave the wife, if it proves that she has not sufficient to live on under the order, to apply to the justices for a revision, in which event I hope that they will take note of the view I am expressing, namely, that it is wrong to eliminate from their calculations overtime pay or the capacity to earn it.

In *Wharton* v. *Wharton* [1952] 2 All E.R. 939 ; 116 J.P. 604, the learned President made observations on the considerations which justices could properly have in mind in determining the amount of an order. The conduct of the parties might be taken into account, but it must be that of both and not of one. It was also laid down that an inadequate order should not be made as a means of bringing pressure to bear upon the wife to become reconciled to her husband.

Protector of Animals

There is no more typical English characteristic than love of and care for animals and no one whose public record embodied this national trait to a greater extent than the late Sir Robert Gower, whose death we announce with great regret.

Sir Robert Gower, K.C.V.O., O.B.E., who was by profession a solicitor, entered Parliament in 1924 for Central Hackney in the Conservative interest. Before this he had been prominent in local government circles in his native Kent. He was elected a councillor at Royal Tunbridge Wells in 1909 and held the office of Alderman for nearly thirty years, being mayor of the Borough between 1917 and 1919.

His Parliamentary work on behalf of the animal world was outstanding. From 1929 until 1945 he was Chairman of the Animal Welfare Committee and he was always to be heard on their problems. He was a prolific sponsor of legislation for their case and introduced and piloted through all their stages the Protection of Animals (Cruelty to Dogs) Act, 1933, and the Protection of Animals Act, 1934 (thereby protecting performing animals in the course of their training and exhibitions). Besides this his other measures were the Cinematograph Films (Animals) Act, 1937, and the Dogs Act, 1938, and he also sought to protect pit ponies by legislation. This volume of private members legislation reflected Sir Robert's exceptional good fortune in the Ballot as well as his stout championship of dumb animals.

It must be rare that a man has such an unusual opportunity of giving practical help to the animals which he loves and Sir Robert lived to see the measures he created giving protection to his countless thousands of dumb friends.

A Fabricated Rent

We had occasion at 115 J.P.N. 708 to mention the case of *R.* v. *Fulham Hammersmith and Kensington Rent Tribunal, Ex parte Marks* [1951] 2 All E.R. 465 ; 115 J.P. 453, for the purpose of warning our readers to distinguish it from an unreported case in which, by a confusing coincidence, Mr. Leslie Marks, the metropolitan magistrate, happened more or less simultaneously to be the addressee of a *mandamus*. Another namesake figured, discreditably, in a sequel at the Central Criminal Court to the reported case. In that case, which came up from the Fulham rent tribunal, a certain Mrs. Rose Adela Marks was the owner of a house let in furnished flatlets. The lessee of one flatlet, consisting of a furnished room and kitchen with joint use of water closet and bathroom, applied to the tribunal for a reduction of her rent of £2 15*s.* a week. She succeeded before the tribunal, which reduced the rent to £1 5*s.*, whereupon the lessor went to the Divisional Court with affidavit evidence, stating that the premises had been let unfurnished before the war to one Ruby Journet, at a rent of £3 3*s.* a week, which was the standard rent. The Divisional Court upheld the lessor's contention that the tribunal had no jurisdiction under the Furnished Houses (Rent Control) Act, 1946, to reduce the rent of premises let furnished below the figure which was the standard rent for letting them unfurnished and quashed the tribunal's decision accordingly. So far as we have noticed, the sequel at the Central Criminal Court has not been widely mentioned in the newspapers. On December 12, 1952, Simon Marks, a son of Mrs. R. A. Marks, the lessor ; the above named Ruby Journet ; and one Gertrude Jenner, were charged with offences in respect of the affidavit evidence which had been before the Divisional Court. Simon Marks was found guilty of perjury, conspiracy to pervert the course of justice, and attempting to pervert the course of justice ; and was sentenced to ten months' imprisonment. Ruby Journet was found guilty also of perjury, and Gertrude Jenner of conspiring to

pervert the course of justice. The two women were bound over in their own recognizances for a period of two years. Mrs. Marks was charged with them but acquitted.

The sentences look lenient, seeing that the convicted persons (especially the man) must have gone deliberately about the work of concocting evidence, but the actual sentences are not important. The episode does not affect the judgment of the Divisional Court upon the powers of tribunals, but it does suggest that, if any similar case on affidavit evidence goes up to the Divisional Court, or indeed if similar evidence to that fabricated by Simon Marks and his associates should come before a tribunal, there may be room for fuller investigation of the facts than was thought necessary in the earlier stages of the Fulham case.

THE CORONERS RULES, 1953 (2)

(*Concluded from p.* 165, *ante*)

The previous article discussed some of the problems connected with coroners which are not dealt with by the Coroners Rules, 1953. This article considers the contents of those rules. The rules fall into three divisions—post-mortem examinations, inquests and miscellaneous provisions. Only the more important rules will be referred to here.

POST-MORTEM EXAMINATIONS

Rule 3 lays down the general considerations which should govern the coroner in deciding who should make the post-mortem examination. The rule is not mandatory, no doubt because s. 21 of the Coroners Act, 1887, and ss. 21 and 22 of the Coroners (Amendment) Act, 1926, give the coroner an unfettered choice. Rule 3 (*a*) stipulates that the person making the post-mortem examination should be a pathologist. In other words he should be a specialist rather than a local general practitioner. Rule 3 (*b*) deals with the delicate situation where both the coroner and the police are interested in a criminal case. The coroner has a statutory duty to investigate the death ; equally the police have a duty to clear up any possible crime. Each may be afraid that the other will intrude on his preserve. Rule 3 (*b*) while leaving the responsibility for the selection of the pathologist with the coroner requires him in such a case to consult the police. In fact, their objects are identical, namely to select a pathologist who will conduct the examination efficiently and, if necessary, make a good witness in legal proceedings. There should, therefore, be no difficulty in agreeing on a common list of suitable pathologists. Rule 3 (*c*) and (*d*) aims at preventing the selection of a pathologist who might be thought to be prejudiced because of his professional connexions or associations. The former paragraph provides that the pathologist of a hospital, if the death occurs at the hospital, may be selected unless either the relatives or the pathologist himself objects or the hospital staff is likely to be criticized. The latter paragraph excludes a member of a Pneumoconiosis Medical Panel if the death might be due to pneumoconiosis. It is to be hoped that coroners will follow the guidance given by this rule instead of taking advantage of the discretion allowed them by statute.

Rule 4 gives to certain persons the right to be informed of the time and place of a post-mortem examination and, if those persons are doctors, the right to be present thereat, or, if not, to be represented thereat by doctors. The persons mentioned in the rule are interested relatives, the deceased's own doctor, the hospital in which the deceased died, the police and interested government bodies. Hitherto, the attendance at post-mortem examinations of doctors who are interested has in practice been allowed, and this rule merely formalizes the existing practice. This rule, however, together with r. 8, meets the criticism of certain hospitals that their medical research was being impeded because post-mortem examinations on hospital patients were not performed at the hospital. Although doctors at these hospitals who wished to do so were allowed to attend at the post-mortem examination, they have complained that they found difficulty in ascertaining the time and place of the post-mortem examination and, as they were busy men, they were usually unable to leave the hospital in order to attend. Rule 4 now ensures that they will be given notice of the post-mortem examination.

Rule 8 (3) provides that post-mortem examinations of hospital patients shall be performed in the hospital (assuming it has a suitable post-mortem room) unless the coroner otherwise decides. It will be noticed that the coroner's discretion to hold the post-mortem examination elsewhere than at the hospital has been retained—no doubt there may be cases where the pathologist will feel that his own resources are more suitable than the hospital's—but it may be presumed that only rarely will the coroner use his discretion to veto the will of the hospital.

The remainder of r. 8 is designed to ensure that post-mortem examinations are performed in a suitable place. Rule 8 (1) excludes the use of dwelling houses and licensed premises. Rule 8 (2) and (4) requires the accommodation to be provided with running water, proper heating and lighting facilities and containers for preserving material. It will be remembered that there is provision under s. 198 of the Public Health Act, 1936, and under s. 236 of the Public Health (London) Act, 1936, to provide post-mortem rooms. In some areas, however, post-mortem rooms may not have been provided or they may not be up to the minimum standards laid down by r. 8. It is only reasonable that a highly skilled pathologist should not be expected to perform on a table in a backyard as has been known to happen. In the absence of suitable accommodation coroners could make use of their statutory power under s. 24 of the Coroners (Amendment) Act, 1926, to remove bodies to an adjoining coroner's district. In the light of experience it will be possible to assess whether the minimum standards laid down by r. 8 are not in fact too low.

Rules 6 and 9 provide for the preservation of material bearing on the cause of death for such period as the coroner thinks fit. This is important not only where criminal proceedings but also civil proceedings may result. This rule would continue the practice which already exists of supplying the Pneumoconiosis Medical Panel with portions of the lung in suspected pneumoconiosis cases. It should also be remembered that there have occurred cases where a second post-mortem examination has led to a reconsideration of the cause of death. If no proceedings are likely to result, the coroner will no doubt order the destruction of the material forthwith.

The danger of a possible cause of death being overlooked at a post-mortem examination is minimized not only by the requirement of r. 3 that a pathologist be employed but also by r. 7 which requires the pathologist to complete a standard form. Compliance with this form necessitates the opening of all body cavities. No doubt in " simple " cases where the cause of death seems obvious some of the examination will be sketchy. But

even in these " simple " cases the apparent cause of death is sometimes found on further investigation not to be the actual cause of death.

INQUESTS

Rule 14 provides that every inquest shall be held in public except where national security requires it to be held in private. It will be remembered that by common law a coroner had a discretion in the matter ; *Garnett* v. *Ferrand* (1827) 6 B and C 611 ; 5 L.J. (o.s.) K.B. 221. A coroner's decision to hold an inquest in private, however, always attracts suspicion and exaggerated publicity and this rule is welcome. It is interesting to note that the exception is limited to " in the interest of national security " rather than to a vaguer phrase such as " in the public interest."

Rule 16 confers a right of audience on barristers and solicitors and at inquests into industrial accidents on trade union members. This last provision is in accordance with existing practice and is an extension of various statutory provisions, *e.g.*, s. 67 of the Factories Act, 1937 and s. 84 of the Coal Mines Act, 1911, which conferred similar rights of audience on trade union members. Rule 16 also precludes the police from examining witnesses except through counsel or a solicitor. There have been complaints that the police sometimes give the impression that the coroner's court is very akin to " a police court."

Rule 18 introduces for the first time the provision that a witness may refuse to answer incriminating questions. Although in practice this principle has been generally observed, it should be remembered that Wills, J., in his charge to a grand jury in 1890 (quoted in *Jervis on Coroners*) thought it an advantage that the coroner was not " fettered by precise rules of evidence." The Wright Committee Report (Cmd. 5070 of 1936) however deprecated this view. It might be a disadvantage to insist on the strict observance of all the rules of evidence particularly since not all coroners have legal qualifications. Nevertheless this rule is clearly desirable. It should be noted that a witness cannot refuse to enter the witness box on the ground that the answers to some questions which he is likely to be asked may incriminate him. His objection can only be considered in relation to a particular question.

Rules 19 and 20 are designed to ensure that a person whose conduct is, or is likely to be, criticized at an inquest is given reasonable notice so that he can attend to defend himself. Groundless complaints, however, should be disregarded by the coroner. These rules will be of particular help to doctors who are sometimes criticized in their absence.

Rules 22 and 23 apply to those cases where police investigations or criminal proceedings are taking place concurrently with the coroner's inquest. Once a charge of murder, manslaughter or infanticide has been preferred, the coroner's inquest is automatically adjourned by virtue of s. 20 of the Coroners (Amendment) Act, 1926. No guidance has hitherto been given, however, on the correct procedure where the police are pursuing their investigations or where lesser criminal proceedings, *e.g.*, a charge of dangerous driving, have been instituted. Rule 23 now gives effect to the advice of Mr. Justice Devlin in *R.* v. *Berrisford* (1952) (116 J.P. 194) that an inquest should not be adjourned merely because such lesser criminal proceedings have been instituted. If the police are investigating a possible case of murder, manslaughter and infanticide, r. 22 gives the police an absolute right to have the inquest adjourned for fourteen days, and thereafter to apply to the coroner for further adjournments.

Rules 26, 27, 33 and 34 are designed to prevent the coroner or other persons at an inquest attempting to comment on, or decide, matters outside the scope of an inquest. Frequently an inquest is treated as a preliminary skirmish to a civil action and advocates are more anxious to establish tactical points for a future action than to ascertain the cause of death. Coroners should be firm in stopping questions and comments which are not designed for the purpose of the inquest. Rules 26 and 27 require the proceedings to be directed solely to ascertaining the statutory requirements. The main purpose of the inquest is to ascertain how the deceased came by his death. This is wider than merely finding the cause of death which is a purely medical question. The coroner must also investigate the circumstances surrounding the death. To this end it is right and proper that he should inquire into, and if necessary criticize, acts and omissions which are directly responsible for the death. It is questionable, however, how far the coroner is entitled to go under r. 26 in investigating either remote causes of death or collateral matters. How far the coroner should go in investigating the circumstances of the death is a matter for him to decide in each case. The coroner should, nevertheless, stop and consider in each case whether a particular matter, even if true, would be germane to his inquiry and, if not, he should exclude it. He should not, for instance, in an inquest on a suicide extend his inquiry into a general survey of the matrimonial difficulties of the deceased nor attempt to become an arbiter of morals. And before a coroner criticizes the action or lack of action of any person or body, he should make certain that the facts on which he bases his criticism give a true and complete picture and that the person or body is to blame in some way for the death. Rules 33 and 34 forbid the verdict to appear to determine any question of civil liability or to include any rider except one concerned with preventing similar fatalities.

MISCELLANEOUS PROVISIONS

Of the remaining rules, some are concerned with the preservation of documents or other exhibits, including notes of evidence which the coroner is required to take by r. 30, and supplying copies of them on payment of the fee prescribed by the Coroners Records (Fees for Copies) Rules, 1929. It is believed that some coroners have not always paid strict regard to the fees prescribed. Other provisions are designed to prevent the issue of duplicate burial and disposal orders by both a coroner and a registrar of births and deaths. Rule 35 prohibits stock juries by providing that nobody shall be summoned as a juror more than three times in a year.

From the foregoing account of the rules it will be seen that two comments need to be made. The first is that there is no way laid down by which compliance with the rules can be enforced. The rules themselves contain no provisions for this purpose. The Lord Chancellor and the Home Secretary have not adequate machinery for the purpose and the power to remove a coroner is not a suitable penalty for minor infringements of the rules. It does seem that this is a matter which could be dealt with by the Coroners' Society. We believe that in fact this view is shared by the Coroners' Society and we understand that they have appointed a committee to which complaints against coroners can be referred. Although the committee possesses no disciplinary powers, the reputation of its members (consisting largely of the president and past presidents of the Society) should exact respect for, and compliance with, its views. If its views were embodied in recommendations to be published from time to time to coroners, there would gradually be built up a body of case law, adherence to which would allay much of the criticism of coroners. This leads to the second point, namely, that the Coroners Rules, 1953, are not, and cannot be for the reasons explained in the previous article, all-embracing. They will need to be supplemented by advice on various points such as is contained in the Recommendations on Procedure of the Coroners' Society. These recommendations would form a useful body of advice on which at a later date legislation could, if required, be based.

I SWEAR IT'S TRUE . . .

By EDWARD CRANGLE, *Deputy Clerk to the Justices, Warrington County Borough*

Why does one take an oath? If two average court witnesses were to be asked that question, one of them might reply "to ensure that the truth is spoken before God"; the other might say, "I don't really know, but I suppose it's a court formality."

Do people really understand the meaning of the words written on the oath card? Often I have grave doubts when I hear two witnesses, both sworn, give entirely opposite accounts of the same facts, or even of themselves. It has been suggested that perjury is not committed as often as one might suspect because many witnesses, even though they are telling lies, have by auto-suggestion convinced themselves that what they are saying is true, and actually do believe their own statements.

The early importance of the oath is realised by this definition taken from the report of the case *R.* v. *White* in 1786: an oath is a religious asseveration by which a person renounces the mercy and imprecates the vengeance of heaven, if he do not speak the truth, and, therefore, a person who has no idea of the sanction which this appeal to heaven creates, ought not to be sworn as a witness in any court of justice.

The Oaths Act of 1888 made provisions for the agnostic, the atheist and others by providing that persons who objected to being sworn on the grounds of not having any religious belief, or that the taking of an oath was contrary to a religious belief, could make a solemn affirmation. Such an affirmation has the same effect as an oath, and if an affirmed witness offers any false and corrupt evidence, he may be liable to punishment for perjury.

Five years before that statute, it was enacted that where an oath has been duly administered and taken, the fact that the person to whom it was administered had at that time no religious belief, should not affect the validity of such oath.

More directions for the taking of an oath are set out in s. 2 of the Oaths Act, 1909, as follows: the person taking the oath shall hold the New Testament, or in the case of a Jew the Old Testament, in his uplifted hand and shall say or repeat after the officer administering the oath the appropriate words.

In fact, no particular form of words is prescribed by law and the oath differs slightly in various courts. The usual oath is "I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth."

The Warrington court, like the American court, invokes the aid of the Deity and the oath concludes with the plea: "So help me God." Unfortunately, the solemnity of the ceremony is sometimes marred by the careless witness loudly lamenting "So God help me." The Douai bible is provided for the use of Roman Catholics and there is also a copy of the Five Books of Moses, though some Jews prefer to swear by Jehova and cover their heads when taking the oath. It is not unusual for a Jew to take a skull cap—"Yamalka"—from his pocket for this purpose. Some use a handkerchief while others merely put one hand on the head, and hold the book with the other hand.

A Mohammedan is sworn on the Koran and the following ceremony was accepted as an oath. The witness placed his right hand on the Koran and put his left hand to his forehead. Then he brought the top of his forehead down to the book and touched it. In reply to a question he said that he was bound by the ceremony to speak the truth.

A similar ceremony was witnessed at Warrington when an Indian refused to touch the Koran with his bare hand and it was handed to him covered. Of course it was not revealed at the time, but the resourceful court officer who seized the first available material for the purpose of covering the book and enabling the case to proceed without further delay, used a shroud from the mortuary.

Of all the oaths, I feel that the following of a Buddhist is one of the most sincere: "I swear, as in the presence of Buddha, that I am unprejudiced, and if what I speak prove false, or if by my colouring truth others shall be led astray, then may the three holy existences, Buddha, Dhamma and Pro Sango, together with the Devotees of the Twenty-two Firmaments, punish me and also my migrating soul."

A Chinese witness was handed a saucer which he broke on a rail in the witness box. The oath was then administered in Chinese by the interpreter with the words "You shall tell the truth; the saucer is cracked and if you do not tell the truth, your soul will be cracked like the saucer."

An unexpected difficulty arose in a southern court when a police officer who had reported a motorist for a minor offence refused to take the oath. He also declined to make an affirmation and told the magistrate that it was against his religious belief either to take an oath or to affirm. It appeared that since his appointment as a constable he had become a disciple of yet another religious sect. The case was dismissed as was the constable.

The witness in court is not the only person called upon to take an oath.

In this great kingdom, allegiance is owed by every subject of the Queen, and resident aliens owe a temporary allegiance, yet no oath of allegiance is exacted except upon appointment to certain offices: *e.g.*, Justice of the Peace, and from naturalized aliens as a condition of the grant of letters of naturalization. The Justice of the Peace on his appointment to the commission must also take a judicial oath.

The Queen must take an oath as prescribed by law when she is crowned. The first stage of the coronation ceremony is the acceptance of the Queen by Her people and the taking of the oath of Royal duties by the Queen.

Even the legislature is sworn. When a new Parliament meets, the Lords take the oath of allegiance as soon as Parliament has been opened, and Commons as soon as the Speaker has been approved by the Queen and has himself taken the oath.

One can go far beyond the statute books for references to oaths. There must have been a lot of swearing during the Anglo-Saxon period. In those days "oath helpers" could be called upon in certain cases to establish on solemn oath that the oath sworn before the court by the defendant himself was a true oath. If the defendant could find about a dozen of these oath helpers the proof was made. Historians would have us believe that it was not very easy to find oath helpers in very bad cases as the consequences of taking a false oath were generally regarded as terrible.

In serious cases oath helpers were dispensed with for the even more farcical "Trial by Ordeal."

In the ordeal by fire, the accused had to carry a red hot iron in his hand over a distance of about three yards. His hand was then bandaged up to be examined three days later. If the wound had healed he was innocent; if it was still open he was guilty. In the ordeal by water, the accused was bound and thrown into a pool. If he sank to a certain depth he was innocent, if not, guilty.

THE COST OF EXTENSION BILLS

The list of private Bills deposited in the present session of Parliament includes three, namely those promoted by the county borough councils of Dudley, Gateshead, and Oxford, which seek extensions of county borough boundaries. Since the war, most county borough extension Bills have had rough passages through Parliament for several reasons. There has been opposition by the administrative county authorities affected by the extensions, supported by the borough and district councils from whose areas the Bills sought to transfer land to the county borough. In addition, until recently the appropriate government departments have not looked with favour on Bills affecting the status or areas of local authorities. The result has been that in most cases the Bills have either been unsuccessful, or have only resulted in transferring small areas, needed for urgent housing purposes, to the county boroughs concerned.

One serious aspect of county borough extension Bills, which is apt to be overlooked, is the effect which the cost of opposing them has on the finances of the smaller authorities, parts of whose territory the county borough seeks to absorb. The cost of opposing Bills in Parliament has always been heavy, but since the war these costs, in common with all others, have increased substantially.

The unfortunate part about these costs is that the opposing authority, even when it is successful in its opposition, rarely if ever recovers any of the expenditure, which it has been compelled to incur to protect its interests, from the promoting authority.

In 1926, Wolverhampton county borough council promoted a Bill in Parliament under which it sought to incorporate within the the county borough a substantial part of the urban district of Tettenhall. Tettenhall is a small urban district in Staffordshire adjoining the county borough. According to the 1952 issue of the Municipal Year Book, it has a population of 7,742 and a rateable value of £58,666, with a penny rate produce of less than £250. The Year Book describes it as being " pleasantly situated on the confines of the Black Country " and as being " almost exclusively residential and agricultural in character." It is not unnatural, therefore, that the ratepayers, through their council, should wish to retain their independence and not be absorbed in an industrial county borough. But the cost of retaining its independence is proving extremely expensive. Its successful opposition to the Wolverhampton Extension Bill of 1926 cost its ratepayers no less than £2,939 17*s.* 11*d.*, or approximately a shilling rate.

That, however, was not the end of the matter, for in 1950 Wolverhampton " had another go ", and was again unsuccessful. This time the cost of opposing the Bill was £3,063 9*s.* 1*d.*, and although on this occasion the county council made a contribution to Tettenhall's costs under the provisions of the Local Government Act, 1948, it still involved a substantial charge on the ratepayers of the district. Naturally, the ratepayers of Tettenhall must be asking themselves how many more times they will have to incur such expenditure to retain their independence.

But Tettenhall is only one district which has been affected in this way. The Dudley Bill seeks to take in 409 acres, of which 220 would come from the area of the urban district of Coseley, another of the authorities in South Staffordshire which is constantly having to defend its existence and territory.

Coseley is bigger than Tettenhall, and presumably is better able to afford to defend itself. Again the Municipal Year Book informs us that it has a population of 34,414 and a rateable value of £125,030. But even with these resources it is questionable how long it can afford to go on defending its existence. It has already defended itself against an extension proposal by Dudley in a Bill promoted in 1937-38, when its expenditure approached £1,000.

Coseley seems to be an attractive area, since Wolverhampton promoted a Bill in 1944 to take in part of its district, and again in 1949. Fortunately, on both occasions, the proposal was withdrawn before the committee stage in the House was reached, with the result that Coseley's costs were merely nominal on both occasions.

The town council of Tipton also looked with envious eyes on Coseley in 1951, but once again Coseley showed fight, with the result that the Bill was withdrawn, the cost to Coseley ratepayers being merely £40.

In considering its opposition to the present Bill by Dudley, Coseley cannot be unmindful of the fact that, even if it is successful, it may have to meet further attacks from Tipton and Wolverhampton in the future. And it naturally wonders how long its ratepayers can afford to continue to incur expenditure of the magnitude of that involved in opposing such Bills.

These matters raise important issues for local government. Yet no one can blame a county borough for seeking to extend its boundaries. Few if any county boroughs have enough land within their boundaries to meet all their needs, and it is natural that they should regard with envious eyes undeveloped land outside their borders. Under the present law, they are at liberty at any time to promote a Bill in Parliament to extend their boundaries, and, if they consider they have a reasonable case for extension, they would be foolish if they did not take the appropriate steps.

Equally, the urban district, or for that matter the rural district, on the borders of a county borough, is reluctant to lose territory, which, while it may not be serving any particularly useful purpose to them at the time, may be of value to them in the future.

It had been hoped that the Local Government Boundary Commission would have found a solution to these problems, and many had hoped that, with the establishment of the Commission, the day of boundary extension Bills was over. Unfortunately, the high hopes which the establishment of the Commission created were never realized. It was inevitable with the abolition of the Commission that each parliamentary session would see the introduction of county borough extension Bills.

The present position, however, seems to be extremely unfair to the districts affected. The costs to the county boroughs are appreciable, but these are costs which are voluntarily undertaken by the county borough when it decides to promote the Bill ; evidently they consider the expense justified, otherwise they would not proceed. The position is different for the opposing authority. They have no voice in determining the issue. It would be unreasonable to expect them to sit back and let the Bill take its course, but, if they take steps to defend themselves against what they undoubtedly will consider unjustified interference with their area, they must face large expense, which will be a burden on their ratepayers.

Surely it is time that some provision was made in the legislation affecting private Bills, or in the standing orders of Parliament, under which authorities opposing a Bill of this kind, can as a matter of right be reimbursed their taxed costs if they are successful.

There is, we know, already legislation on the subject. The Parliamentary Costs Act, 1865, which deals with the costs incurred in opposition to private Bills in Parliament, and the Parliamentary Costs Act, 1871, which extends the provisions of

the Act of 1865 to Bills to confirm provisional orders, do make certain provisions for the costs of petitioners. Such provisions are, however, not considered to be satisfactory by the authorities affected.

Under s. 1 of the Act of 1865, when the committee on a private Bill decides that the preamble is not proved, or inserts a provision for the protection of a petitioner, or strikes out or alters any provision for the protection of a petitioner, provision is made for the petitioner's costs to be paid in certain circumstances.

Before costs can be awarded, however, it is necessary for the committee unanimously to report that the petitioners have been unreasonably or vexatiously subjected to expense in defending their rights, and it is only in such circumstances that the committee can make an order for the payment of the petitioners' costs by the promoting authority.

Incidentally, the same Act also makes provision that, if the committee unanimously report that the promoters have been vexatiously subjected to expense in their promotion by the unfounded opposition of the petitioners, an order may be made for a proportion of their costs to be paid by the petitioners.

There are cases on record in which successful petitioners have been awarded costs against the promoters under the provisions of the Act of 1865, but there has been no such case recently. And that is not surprising, having regard to the terms of the Act.

In most cases, the promoting authority will undoubtedly have a *prima facie* case for the extension they seek ; that being so, it is difficult for a committee to say that the petitioners have been unreasonably and vexatiously subjected to expense in defending their position.

To illustrate the point, it is interesting to refer back to the case of Tettenhall in 1950. Tettenhall put up a strong resistance in the first House but were unsuccessful. They carried their opposition to the second House and succeeded. It would have been extremely difficult for the committee in the second House to have said that the promotion of the Bill was unreasonable or vexatious.

There is a good deal of independence on the part of committees of the two Houses. If a promoting authority wins in one House, it cannot sit back and expect automatically to succeed in the second House. No committee regards itself as bound, or allows itself to be unduly influenced, by any decision made by a committee of the other House, as many cases illustrate. It would, however, be extremely difficult for a committee to say that a Bill was unreasonable or vexatious, if the promoters had been able to satisfy a committee of one House that they had a good case to the extent that the Bill had been passed by that House.

It is not known whether counsel for the urban district council of Tettenhall applied for costs under the Act of 1865, when the council were successful in the second House, but if an application had been made it seems unlikely that it could have succeeded.

Another illustration can be quoted from the last session of Parliament, in connexion with the West Hartlepool Extension Bill, under which the county borough of that name attempted to incorporate within its boundaries the adjoining borough of Hartlepool. There again, the Bill was successful in the House of Commons, but was rejected by the Lords. Accordingly, it would have been most difficult for the Lords' committee to have said that the promotion was unreasonable or vexatious ; it would have been unreasonable for them even to have considered making an order under the Act of 1865.

In view of the statutory position and the hardship which it entails on petitioning authorities, it is surely time that Parliament gave some consideration to an amendment of the law, or of its own standing orders, to provide some protection for small authorities such as Tettenhall. The normal practice in litigation is for costs to follow the event ; that is to say, the successful party secures his costs from the unsuccessful party. It is doubtful, however, whether such an arrangement would be satisfactory in proceedings of this kind.

If costs were made to follow the event in parliamentary proceedings, then conceivably the position of small authorities affected by county borough extension Bills might be even worse than it is today. For instance, a small urban district might incur substantial expenditure in defending its territory, and, being unsuccessful in its opposition in Parliament, it would not only lose its territory but would have to bear the whole of the expense it had itself incurred, together with part of the expenses of the promoters of the Bill. In other words, the last position would be worse than the first.

Apart from the unfairness of such a situation, there is a difference between parliamentary proceedings and ordinary legal proceedings. In normal legal proceedings, in matters of contract or tort, there is an issue between the parties, in which both parties have been concerned. The proceedings are taken to determine the relative and respective rights of the two parties. In parliamentary proceedings the petitioning authority has not in normal cases been in any way concerned in events or contracts giving rise to the promotion of the Bill. There is no suggestion that the promoting authority has any contractual right to the territory which it claims. Furthermore, there is no suggestion that the petitioning authority has taken any action affecting the rights of the promoting authority which the latter is seeking to adjust by litigation. The promotion of the Bill is a voluntary act on the part of the promoting authority, and the petitioning authority is put to expense through no fault of its own—and for no such reason as arises out of matters of contract or tort.

Accordingly, it would be unreasonable to make provision for costs to follow the event as in normal litigation. Equally, it is unreasonable to leave the position as it is. The obvious amendment required is a provision under which a successful petitioning authority is automatically entitled to its costs against the promoters.

From statements made by Ministers, it appears that the present Government, assuming they remain in office long enough, intend to introduce legislation for the re-organization of local government. It may be that such legislation will remove the necessity for county borough extension Bills, by making other provision for the adjustment of local authority boundaries. In the meantime, however, what has been said above indicates an instance in which reform is urgently needed, and it is submitted that the Government of the day should give early consideration to the introduction of a short Bill, which need not be controversial, to mitigate what might be a serious hardship to the ratepayers of many small, or even not so small, urban and rural authorities. LL.M.

Goodness knows what he wouldn't do to them—
But when it came to the point he wouldn't say Boo to them.

J.P.C.

GARNISHEE PROCEEDINGS

It's satisfying to a degree
To pull off a Garnishee,
Because usually when you get to the Bank
You draw a complete blank
And the debtor has withdrawn it all
Just before you call. J.P.C.

PUBLIC LOCAL INQUIRIES

(*Concluded from p. 170, ante*)

THE SOCIETIES' MEMORANDUM AND RECOMMENDATION

Among the examples of the purposes for which a public inquiry may be held the memorandum instances the designation of a new town under the New Towns Act, 1946 (not now likely to be invoked again in view of the decision of Mr. Macmillan to designate no further new towns); clearance orders or redevelopment plans under the Housing Act, 1936; a development plan under the Town and Country Planning Act, 1947, and the compulsory acquisition of land under what is described as "a great variety of statutes." To cite at the present time clearance orders and omit compulsory purchase orders under Part V of the Housing Act, 1936, and the Acquisition of Land (Authorisation Procedure) Act, 1946, for the provision of housing accommodation is curious. Strangely enough no mention is made of the Act of 1946, which now almost invariably applies on the compulsory acquisition of land by local and public authorities, or to the innovation which it introduced of an informal hearing at the option of the Minister in lieu of a public local inquiry (sch. 1, para. 4 (2)). A public local inquiry where the Acquisition of Land (Authorisation Procedure) Act, 1946, applies is only obligatory where there are objections not withdrawn to an order of the Minister extinguishing public rights of way (s. 3 (3)). Similarly in regard to planning appeals, the Minister is not obliged to hold a public local inquiry but is merely required, if either the applicant or the planning authority so desires, to afford each of them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose (Town and Country Planning Act, 1947, ss. 15 (2) and 16 (2). A further omission is the power under para. 4 (4) of sch. 1 to the Acquisition of Land (Authorisation Procedure) Act, 1946, (following the precedents of earlier Acts) to disregard an objection which the Minister is satisfied relates exclusively to compensation which can be dealt with by the tribunal by whom compensation is assessed. There does not appear to be any reported case where proceedings to quash an order have been taken because objections have been wrongly disregarded on this ground. Many objections since the Town and Country Planning Act, 1947, have had as their possibly undisclosed object the avoidance of the sale of land at the existing use value. The Local Government Manpower Committee in their second report suggested that compulsory purchase orders might be avoided by making use of agreements referring questions of price to the Lands Tribunal as though orders had been confirmed, a course which was commended by the Ministry of Housing and Local Government in their circular 7/52.

There will be whole-hearted agreement with the Societies' recommendation that inquiries should be held with reasonable promptitude and subsequent decision given with the utmost speed, since the threat of compulsory purchase or uncertainty as to the use of land may seriously prejudice the interests of the owner. This may be a counsel of perfection, but nevertheless reveals a justifiable ground of complaint. It may well be that the administrative process because of its increased extent and volume is becoming slower, but adoption of the Societies' further recommendations for publication of the inspector's report (including his review of evidence) and the Minister's reasons for departing from the inspector's recommendations would most certainly increase the delay complained of.

On the question of appeals against the Minister's decision, the Societies make no recommendation. The absence of appeal may at first sight appear to be unsatisfactory, but it is difficult, as they point out, to see how administrative decisions can be open to review by the courts, except where the Minister has acted *ultra vires* or otherwise contrary to law. They do not, therefore, ally themselves with those critics who urge a right of appeal to the courts or recommend the establishment of a new Administrative Division of the High Court. To do so would, as has been pointed out, overlook that to a large extent the issues are dependent on questions of policy for which the Minister is answerable to Parliament, and that "he cannot divest himself of that responsibility by shifting the jurisdiction to someone else who is not so answerable." The Societies are on firmer ground in suggesting that the possibility of extending the category of cases in which there is a review by Parliament is worthy of serious consideration. How this is to be effected is another matter, and is not dealt with. The *Elvedon Estate* case which is quoted as an example of effective Parliamentary review is now outdated and inapplicable. That case concerned the attempt of the Minister of Agriculture and Fisheries in 1950 to acquire on behalf of the Forestry Commission 650 acres of Lord Iveagh's Elvedon Estate for forestry purposes. After an inquiry at which no evidence was given by either the Minister or the Commission, the former promoted a confirmation Bill to acquire compulsorily a considerably less area of 350 acres, which Bill was rejected by a Select Committee of the House of Commons without calling on counsel for Lord Iveagh, petitioning against the Bill. The former provisions of the Forestry Act, 1945, whereby a compulsory purchase order made by the Minister on behalf of the Commission was provisional only if objected to, and required confirmation by a Provisional Order Confirmation Act, has now been replaced by the Forestry Act, 1951. Section 20 of the latter Act now provides for the Minister's order being subject to the "special parliamentary procedure" provided by the Statutory Orders (Special Procedure) Act, 1945. This, as it has been observed, is a less effective safeguard since general policy is now required to be determined on the floor of the House leaving one hearing only before a Joint Committee of both Houses, shorn of responsibility or concern for general policy.

Objection is raised to the departmental "clearance" of proposals without prior consultation with the owners and occupiers, and it is urged that, where the views of any government department are relevant factors in reaching a decision in connexion with which an inquiry is held, those views should be made available to the party in advance and be open to discussion at the hearing whether or not oral evidence is given at the hearing in support of those views. Such clearances which are in the nature of public policy do not prejudice private objections against compulsory purchase but the Local Government Manpower Committee in their Second Report recommend that this be made clear when such a clearance is quoted. Morris, J., in *Summers* case pertinently remarks "I cannot conceive that it would have assisted the applicants to know that other departments did not object to the confirmation of the order or that the Minister of Agriculture was not supporting the objection of the applicants."

The concluding recommendation advocates independent inspectors under the Lord Chancellor, whose independent status would have an important psychological effect on persons who appear at public local inquiries. This recommendation is bound up with the previous recommendation that the inspector's report (including his review of evidence—a very important enlargement) to the Minister concerned should be published, and that the Minister should give reasons for any departure from

the inspector's recommendation. There is no suggestion for an independent tribunal who would both ascertain the facts and determine the issue, thus removing from the Minister responsibility for the decision. The suggestion is the alternative of a " corps of inspectors." The Societies make it clear that they make no reflection on the impartiality of inspectors, and in so doing they differ from other critics who have impugned both their impartiality and their competence. Accepting that inspectors will not decide the issue but merely report to the Minister who makes the ultimate administrative decision, and that their competence and impartiality are not in question, it is difficult to see what advantage is likely to accrue from independent inspectors under the Lord Chancellor over inspectors who are technical officers of the Minister who will give the ultimate decision. The suggestion is another example of the modern tendency (which should be discouraged) to treat each separate function as being self contained so as to necessitate a special staff to undertake its discharge. Taken in conjunction with the suggestion for publication of reports, and the Minister's reasons for differing therefrom, one can imagine that relations between an independent inspector with no responsibility for the decision and the department responsible for that decision might become so lacking in harmony as to produce a still greater lack of public confidence in the system. The crux of the problem is to recognize that Parliament has designated a Minister responsible to it, and in theory subject to its own review, as the person who, after informing his mind by the holding of an inquiry into objections and giving genuine consideration to those objections, is to decide in his adminstrative capacity how the policy for which he is responsible to Parliament shall be applied or carried out in the given circumstances of a particular case. Professor Keeton has recently published a book entitled " The Passing of Parliament," and Mr. Christopher Hollis, M.P., has called attention to the " pretence that a gigantic Parliament of more than 600 members can really control the intricacies of a nation's business " and reaches the conclusion that " this is and must necessarily be a farce." Parliament is now to review the question of delegated legislation, and it might, with equal advantage, consider its own supervision and review of the widened area of bureaucratic rule associated with administrative decisions and public local inquiries, since the various statutory provisions and legal decisions bearing on the question might well suggest to Professor Keeton a companion volume on " The passing of the Courts."

K.H.C.

SNOW ON PAVEMENTS

By the time this article appears most people will be hoping that heavy falls of snow are over, so far as the present winter is concerned, although they may be uneasily mindful of late and sometimes heavy falls in previous springtimes—like the freakish occurrence on the day of the University Boat Race, 1952. Exceptionally severe snowfall in some parts of the country, in the early weeks of 1953, called attention once more to a problem which has cropped up from time to time for many years—namely that of clearing the snow away from footways.

Section 44 of the Public Health Act, 1875, conferred power on the councils of boroughs and urban districts to make byelaws for the prevention of nuisances arising from snow, and this is repeated in different words (" byelaws for preventing the occurrence of nuisances from snow ") in s. 81 of the Public Health Act, 1936. Any such byelaws which were in force under the Act of 1875 when the Act of 1936 came into operation were saved by s. 346, but for reasons to be mentioned this has not much bearing today on the clearing of snow from footways. Nor has a similar power in s. 16 of the Public Health (London) Act, 1891, re-enacted in s. 84 of the Public Health (London) Act, 1936. Section 26 of the Highway Act, 1835, imposes on highway authorities the duty of removing snow from the highway after notice by a justice of the peace. Section 1 of this Act defined highways to include all roads, bridges other than county bridges, carriage ways, . . . footways, causeways, churchways, and pavements. There seems no reason to suppose that the ordinary paved footway alongside a street in a town is not part of the highway within the meaning of s. 26 of the Act of 1835, just as it is certainly part of the highway for other purposes. Less explicitly (so far as concerns snow) s. 29 of the Public Health (London) Act, 1891, imposed upon metropolitan borough councils the duty of keeping their streets, including the footways, properly swept and cleansed so far as reasonably practicable. This is re-enacted in s. 86 of the Public Health (London) Act, 1936.

Under s. 44 of the Public Health Act, 1875, mentioned above, it was in the late nineteenth century fairly common for the councils of boroughs and urban districts to make a byelaw imposing upon the occupiers of premises fronting, adjoining, or abutting on a street the duty of removing snow from the footway as soon as could conveniently be done. This byelaw was coming to be regarded as already out of date before the first world war ; there were few places where it was adopted for the first time in the present century, and it did not, we believe, appear in any edition of the model byelaws after 1914. The statutory power is used in modern editions of the model series to support two different byelaws, requiring persons who remove snow from a footway to avoid undue accumulation thereof in any channel or carriage way, and requiring persons who use salt for the purpose to remove the product of the salt and snow. The old byelaw requiring occupiers to clear snow from the footways is mentioned in a footnote to *Knight's Annotated Model Byelaws*, edition of 1928, as something which used to be in the model series, but was no longer desirable. Such a byelaw was unobjectionable enough in Victorian days, when it was devised. In those days a large proportion of town dwellers lived above their shops, or otherwise in narrow-fronted houses, abutting on paved streets, and the removal of snow was not a matter of insuperable difficulty, especially since cheap manual labour for the purpose was normally obtainable. Quite other considerations arose with the tendency to spread the residential accommodation of the town. The urban tradesman who could have put upon his subordinate employees the work of clearing the snow outside his shop, or could hire for a shilling or two some member of the unemployed, now lived, typically, in a detached or semi-detached villa in the suburbs of the town, with a frontage perhaps twice that of his house itself. His employees, also, were quite likely to live on the outskirts of the town ; he and they often had to start for business early, so that the work of clearing snow in residential areas, if regarded as an obligation of the householder, would fall upon the women of the household, and that in years when casual labour for the purpose was becoming more and more difficult to find. Accordingly the Local Government Board, bearing in mind the obligations imposed on local authorities by the Highway Act, 1835, and the Public Health (London) Act, 1891, and also these changing social conditions, had come to the conclusion that the nineteenth century byelaw was no longer reasonable. So far as we know the byelaw making power had never been used in London for requiring the occupiers of premises to clear snow ; this had at least since 1891 been regarded as a

public, not a private, duty, and once the byelaw had been struck out of the model series issued under s. 44 of the Act of 1875 we believe that we are right in saying that it was never confirmed by the Minister of Health. In other words, in so far as the byelaw still survives, it is older than the first world war, and mostly older than the twentieth century. *Lumley*, p. 2476, quotes the *Municipal Review* for 1936 as saying that there were few areas in which such a byelaw was enforced, even if nominally exisiting, and that it was not likely to be enacted in future. Our own information is that the byelaw scarcely survives anywhere at the present day: *see* 102 J.P.N. 357 (foot of first column). The chief reason of its disappearance, where it formerly existed, is that between the wars there was a period of borough extensions and other boundary alterations; in connexion therewith it was the regular practice to include in local Acts and county review orders a provision setting a term upon the life of byelaws made under the Public Health Acts and some other Acts. This was upon the same principle as the enactment in s. 68 of the Public Health Act, 1936, which puts such a time limit upon building byelaws, and s. 19 (6) of the Water Act, 1945, which puts a similar time limit upon byelaws for preventing waste of water. The principle is that byelaws made for any purpose ought from time to time be reviewed, in the light of changing social conditions; if they are found still to meet the needs of the community when they are reviewed, they can be re-enacted: if not, they are all the better for being allowed to lapse. A statutory provision setting a term upon their life ensures that this review shall take place at regular intervals, but (we think regrettably) Parliament had not seen its way to extend this principle to all byelaws made under the Public Health Acts, so that there was, and is, no such statutory time limit upon the continuance of byelaws above mentioned as regards snow. Substantially the same result has, however, been produced, inasmuch as the policy followed in borough extensions and review orders had before 1936 got rid of it in most places. A correspondent, who suggested our publishing this article, told us of a prosecution under such a byelaw since the end of the second world war, but did not give the date. He tells us that a number of householders were prosecuted, but set up the defence that age or infirmity prevented their compliance with the byelaw, and they could not obtain paid help. The summonses (he tells us) were dismissed. This was a satisfactory result. We should like to think that in the borough in question the byelaw was now regarded as dead; it would make for removal of doubts and possibly relieve infirm or elderly householders here and there of a nominal burden which they cannot support in practice if the byelaw, anywhere that it still exists, were formally repealed as being no longer in accord with conditions of life at the present day.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 21.

TRIBULATIONS OF A HEADMASTER

The thirty-seven year old wife of the headmaster of a local school appeared at Doncaster Magistrates' Court last month to answer three charges of persistently making telephone calls for the purpose of causing annoyance, contrary to s. 10 (2) of the Post Office (Amendment) Act, 1935.

For the prosecution, it was stated that the telephone calls were made to another school headmaster. It appeared that the two headmasters concerned were, for a period, employed at the same school, that on more than one occasion they had both made applications for the appointment of headmaster at the same schools, and that the headmaster to whom the telephone calls were made had been successful in one of the applications. The telephone calls were made quite frequently, not from school to school, but from the private residence of the one to the private residence of the other, and made between 12 o'clock midnight and 2.0 *a.m.* It was stated that approximately forty calls were made between September, 1951, and April, 1952, then discontinued until November, 1952, and then continued until February, 1953.

The method used was to make the call, and immediately the receiving telephone was lifted, the caller replaced the mouthpiece without a word being spoken. Post Office engineers traced the source of the calls.

The defendant was interviewed by the police in the presence of her husband. They were asked if they knew anything about the persistent annoying telephone calls being made. The husband denied any knowledge of the matter, but his wife said: "I am the culprit, it was a joke, I have done it often and it's no use beating about the bush". The husband told the police he was in bed when the calls were made, but that he knew that his wife had done it as a joke.

For the defendant, who pleaded guilty to the three charges, it was stated that a number of school teachers' wives formed "a sort of conspiracy over cups of coffee to ring the headmaster up for annoyance." About forty calls had been made of which the defendant admitted responsibility for about ten.

The Chairman, fining the defendant £2 upon each of the three summonses, told her that the joke was in very bad taste, and that it was quite incomprehensible that a responsible person should indulge in such a childish practice.

COMMENT

Mr. M. Preece, clerk to the Doncaster Justices, to whom the writer is indebted for this report, mentions that the two headmasters involved are now employed at different schools!

Section 10 (2) of the Act of 1935 creates a number of offences which may be committed by persons misusing the telephonic and telegraphic facilities which are available. Offences may be punished by imprisonment for a month and a fine of £10.

R.L.H.

No. 22.

HOME-MADE VODKA

A forty-nine year old Polish-Ukrainian was charged at Nottingham Magistrates' Court earlier this month, first, with depositing goods in respect of which a duty of Excise is imposed, namely, .804 proof gallons of spirits, with intent to defraud Her Majesty of such duty, contrary to s. 32 of the Excise Management Act, 1827; secondly, with compounding spirits without being licensed so to do contrary to s. 5 (1) (*c*) of the Spirits Act, 1880, and thirdly, with having a still for distilling spirits without being licensed to have one, contrary to s. 5 (1) (*a*) of the Spirits Act, 1880.

For the prosecution, it was stated that the defendant, a £7 a week labourer, made his own vodka with which to celebrate the expected birth of his third child. The defendant's excuse for distilling the concoction was that he did not like the taste of English spirits. The apparatus used for distilling the spirits, reminiscent of the art of the late Mr. Heath Robinson, was arrayed in court before the magistrates, who were informed that the maximum penalty for the three offences aggregated £2,100.

Defendant was fined £5 upon the first charge and £10 upon each of the second and third charges.

COMMENT

Section 32 of the Act of 1827 provides that anyone who removes, deposits or conceals any goods or commodities in respect of which Excise duty is imposed, shall forfeit and lose treble the value of the goods or the sum of £100 at the election of the Commissioners of Customs and Excise and in addition the goods shall be forfeited. By s. 12 (2) of the Finance Act, 1943, the penalties prescribed by s. 32 of the Act of 1827 were vastly increased so as to enable a court in addition to ordering a convicted defendant to pay the financial penalty, to be imprisoned for two years.

Section 5 of the Spirits Act, 1880, which prohibits the distilling, rectifying or compounding of spirits without a licence provides in subs. 2 that an offender may be fined £1,000 for each offence and the materials used for distilling, etc., shall be forfeited.

By s. 320 of the Customs and Excise Act, 1952, which came into force on January 1, 1953, the whole of the Spirits Act, 1880, and the whole of the Excise Management Act, 1827, except s. 8, were repealed but the sections referred to in the charges outlined above have been in substance re-enacted in the Consolidating Act. The provisions of s. 5 of the Act of 1880 are re-enacted in more stringent form in s. 106 of the Act of 1952. Subsection 2 of s. 106 provides that where there is

insufficient evidence to convict a person of the offence of, *inter alia*, having in possession a still for distilling but it is proved that such an offence has been committed on some part of the premises belonging to or occupied by the defendant, in such circumstances that it could not have been committed without his knowledge, such defendant shall be liable to a penalty of £100.

The provisions of s. 32 of the Act of 1827 are substantially re-enacted in s. 304 of the Consolidating Act.

(The writer is indebted to Mr. W. M. R. Lewis, clerk to the Nottingham Justices, for information in regard to this case).

R.L.H.

No. 23.

A LICENSEE FOUND IN POSSESSION OF UNCUSTOMED GOODS

The licensee of a West Drayton public house was summoned to appear at Uxbridge Magistrates' Court on December 11, 1952, to answer a charge that on a date in July, 1952, he knowingly kept certain uncustomed goods, *viz.*, 2,270 cigarettes, seven bottles of whisky, twenty watches, eleven cameras, two dry shavers and one radio set, with intent to defraud Her Majesty of the duties due thereon contrary to s. 186 of the Customs Consolidation Act, 1876, s. 15 of the Finance Act, 1935, and s. 12 of the Finance Act, 1943.

The defendant was represented and elected to be tried by a jury. For the prosecution, evidence was given that police officers from Scotland Yard, having obtained a search warrant, searched the defendant's premises where they found the items enumerated in the charge. All these items were of American origin, and a large number of them were labelled either with the name of an American or a number. There was also found a ledger which contained an entry relating to every item mentioned in the charge, and a considerable number of other items. These entries showed the date, the name of an American, a description of the article and, in a separate column, a sum of money was shown. Against some entries was written "To be sold on . . ." followed by a date. In some instances this latter entry appeared against items produced in court, although the dates shown on which the goods were to be sold had in fact passed.

It was the prosecution's case that these goods had been brought into this country by Americans under arrangements which allowed their import free of Customs Duty and also free of, where appropriate, Purchase Tax. The prosecution suggested that these goods became liable for duty when they came into the hands of a person whose possession of goods did not under the special scheme carry exemption from duty. In these circumstances the prosecution submitted that there must be held an intention to defraud.

The defendant appeared at Middlesex Quarter Sessions in January last when he pleaded guilty to the charge and was fined £150 and ordered to pay £25 costs. Mr. Eric Neve, Q.C., the learned Chairman, describing the offence as "nearly a technical one" drew attention to the curious position which may arise if any citizen in this country accepts from an American airman a gift in the form of an article which the American has brought into the country, and upon which neither purchase tax nor customs duty has been paid. The learned Chairman expressed the hope that the conviction would not affect the renewal of the defendant's licence.

The application for the renewal of the licence came before the Uxbridge Licensing Justices in February last, and consideration of the matter was adjourned until the adjourned meeting which took place earlier this month, when the defendant's licence was renewed.

COMMENT

By s. 320 of the Customs and Excise Act, 1952, nearly all the 290 sections of the Customs Consolidation Act, 1876, (including s. 176) were repealed as from the beginning of this year and it is a matter for regret that a few of the sections have been allowed to remain. It is so very simple if one can look to one Act of Parliament for the whole of the statute law upon a particular topic and so very difficult if there remains in force apart from the provisions of the Consolidating Act some of the earlier statute law dealing with the same topic. It is much to be hoped that the new Licensing Consolidation Bill will, when produced, be seen to include within its provisions the whole of the statute law relating to the subject.

The case outlined above is of interest in view of the very large number of American servicemen at present in this country. Mr. Laurance Crossley, clerk to the Uxbridge Justices, to whom the writer is indebted for this report, comments that brought to an absurd level a citizen of this country would be liable to conviction under the appropriate section of the Consolidating Act, if he accepted a cigarette from an American serviceman!

R.L.H.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

PREVENTION OF CRIME BILL AMENDED

Only two amendments were made to the Prevention of Crime Bill when it was considered in Standing Committee in the House of Commons. Both amendments were proposed by Mr. J. M. C. Higgs (Bromsgrove) and were accepted by the Government.

The first amendment provides that where a person is convicted the Court may make an order for the forfeiture or disposal of the weapon concerned. The second amendment restricts the power of a police officer to arrest without warrant to a crime " in the course of committing which he reasonably apprehends that an offensive weapon will be used."

Regarding the second amendment, Mr. Higgs said that as the Bill stood a police officer might have power to arrest a person who happened to have an offensive weapon in his pocket because that person parked his car on the wrong side of the road. The Secretary of State for the Home Department, Sir David Maxwell Fyfe, accepting the amendment, said that the point of it was that the offence must be one in the course of the commission of which an offensive weapon might be used.

The Bill now awaits Report and Third Reading.

JUVENILE CRIME

The Secretary of State for the Home Department states in a written answer that provisional figures for 1952 show that at all courts in England and Wales 26,212 children under the age of fourteen and 18,866 young persons aged fourteen and under seventeen were found guilty of indictable offences. The comparable figures for 1951 were 28,578 and 18,895.

AMENDMENT OF CHILDREN ACT?

Mr. Somerville Hastings (Barking) asked the Secretary of State for the Home Department whether, in view of the increasing number of parents who abandoned their children, he would give consideration to the desirability of the revision and consolidation of existing legislation against such practices.

Sir David replied that available figures showed that the numbers of children received into care under the Children Act as abandoned or lost were 1,449 in the twelve months to November, 1950, and 1,364 in the twelve months to November, 1951. When opportunity for amending legislation occurred, consideration would be given to the need to strengthen the existing law.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, March 10

CITY OF LONDON (CENTRAL CRIMINAL COURT) BILL, read 3a.

Wednesday, March 11

ROYAL TITLES BILL, read 3a.

Thursday, March 12

MERCHANDISE MARKS BILL, read 3a.

HOUSE OF COMMONS

Wednesday, March 11

BIRTHS AND DEATHS REGISTRATION BILL (LORDS), read 2a.

Friday, March 13

JUDGES' REMUNERATION BILL, read 1a.

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) BILL, read 2a.

NOTICES

The next court of quarter sessions for the Borough of Shrewsbury will be held on Wednesday, March 25, 1953, at the Shirehall, Shrewsbury, at 11 *a.m.*

The next court of quarter sessions for the city of Coventry will be held on April 9, 1953, at the County Hall, Coventry, at 11 *a.m.*

The next court of quarter sessions for the Isle of Ely will be held on April 8, 1953, at Ely.

The next court of quarter sessions for the county of Cardiganshire will be held on Thursday, April 9, 1953.

PERSONALIA

OBITUARY

We record with great regret the death, at the age of eighty-one, of Mr. L. G. H. Horton-Smith, for long a contributor to these columns.

Called to the Bar by Lincoln's Inn in 1897, the year of Queen Victoria's Diamond Jubilee, Mr. Horton-Smith practised on the South Eastern Circuit and was a member of the Sussex and Middlesex Sessions. Coming from an old legal family (his father being the late R. H. Horton-Smith, K.C., and his uncles the late Judge Sir Lumley Smith, K.C., and the late Judge F. Meadows White, Q.C., and his paternal great uncle the late William Golden Lumley, Q.C., initiator of *Lumley's Public Health*) he was, perhaps, mainly known to our readers for his articles on the law of landlord and tenant. He was the chairman of the first rent tribunal to be established under the Landlord and Tenant (Rent Control) Act, 1946, and was author of a booklet published by this journal on the Act entitled " A Six Months' Retrospect ". He was a referee under the Landlord and Tenant Act, 1927, from its outset, and was also a deputy chairman under the Unemployment Insurance Act, 1920-1927. For ten years, following his call to the Bar, he was a member of the Joint Board of Examiners appointed by the four Inns of Court, and as far back as 1899 he wrote " An Account of the Usury Laws ", and in 1903-4 assisted Sir John Paget in his " Law of Banking ". He had the unusual distinction of being the only member of the Bar to have published a work in Latin " Sophocles and Shakspere ".

His public work made great inroads into his time; he was a Joint Founder of the Imperial Maritime League, and was author of many works on the Navy and National and Imperial Defence. In addition, the range of his interests included genealogy, and he was a prolific writer on this as on all subjects which interested him. Possibly it was because of his wide range of interests, and the demands they made on his time, that he never achieved judicial office, if he had indeed desired this—but there can be no doubt that he enjoyed a mastery over the complexities of the law of landlord and tenant which was recognized by both branches of the legal profession. His contributions to this journal extended over a period of more than twenty years, and by this office, as by all his friends, his pleasant humour and charming personality will be greatly missed.

LOCAL AUTHORITIES AND "UNFIT" HOUSES

I.—CLOSING ORDER OR DEMOLITION ORDER?

By J. A. CÆSAR

The decision of the Court of Appeal in *Birch* v. *Wigan Corporation* [1952] 2 All E.R. 893, will doubtless have caused many local authorities to revise their views regarding their powers to make closing orders and demolition orders under the Housing Act, 1936.

In that case it will be remembered that several dwellinghouses in a block of terraced houses were considered by the Corporation "to be unfit for human habitation and . . . not capable at a reasonable expense of being rendered so fit." The "unfit" houses were such, however, that their demolition could not be effected without rendering uninhabitable the other houses in the block. The Corporation, doubtless like many other local authorities faced with the same situation, felt that, in view of the shortage of housing accommodation, it would be undesirable to make demolition orders under s. 11 (4) of the Act in respect of the "unfit" houses since the execution of those orders would render the whole of the block of houses unavailable for human habitation; instead, the Corporation made a closing order under s. 12 (1) purporting to prohibit the use of the "unfit" houses for human habitation, and the owner of those houses appealed to the county court to have the order quashed.

The owner's appeal was allowed in the county court; the Corporation appealed against the order of the county court judge, but their appeal was dismissed. In dismissing the Corporation's appeal the Court of Appeal held that in no case could any of the "unfit" houses be deemed to be a "part of a building" within the meaning of s. 12 of the Act and that therefore the closing order made by the Corporation under that section was *ultra vires*; each such "unfit" house was, however, held to be a "house" within the meaning of s. 11 and the Corporation should, therefore, have made an order for their demolition under that section; the court, in other words, decided that the two sections are mutually exclusive and that a "house" cannot also be "part of a building" for the purposes of Part II of the Housing Act.

It is interesting to note that Denning, L.J. (who sat with the Master of the Rolls and Romer, L.J., in the Court of Appeal) although agreeing that ss. 11 and 12 are mutually exclusive, was of the opinion that the Corporation's appeal should be allowed; he advanced the suggestion that the block of houses was a building and that each house in the block was a part of that building; those houses "then come within s. 12 and not within s. 11 . . . If some of the houses in the block are unfit and others are fit, the only proper order is a closing order against the unfit ones, not a demolition order. If all of the houses . . . are unfit, they still do not come within s. 11. The proper procedure then is for them to be declared a Clearance area within s. 25 and demolished under s. 26 . . . This interpretation is supported by s. 18 . . . which contemplates that a closing order can be made in respect of a house, and also by *Hedley* v. *Webb* [(1901) 65 J.P. 425; *sub nom. Webb* v. *Knight, Hedley* v. *Webb*, 70 L.J. Ch. 663; 41 Digest 3, 5], where it was held that a pair of semi-detached houses constituted 'one building only,' whence it is right to say that each of them was part of a building."

The views quoted above were presumably the views held by the Wigan Corporation; the majority decision of the Court of Appeal, however, shows that those views are not the correct ones, and many local authorities who previously held them will doubtless have had to reconsider what steps they should in future take when faced with a situation similar to that which gave rise to the Wigan case.

One solution would appear to lie in the local authority endeavouring to persuade the owner (or owners) of the "unfit" houses to give an undertaking under s. 11 (3) that the houses will not be used for human habitation, that minimum repairs will be carried out to render them safe and prevent their causing damage to the adjoining premises, and that he (the owner or owners) will demolish the houses if and when the remaining "fit" houses in the block themselves become "unfit" or otherwise due for demolition; in the absence of such an undertaking, however, local authorities would, if the preliminaries envisaged in s. 11 (1) have already been carried out, appear to have no option but to make a demolition order, since it is unlikely that an undertaking under s. 11 (3) to "carry out such works as will . . . render the house[s] fit for human habitation" will be forthcoming as the cost of such works must be expected to be "unreasonable" (otherwise the local authority would have proceeded initially under s. 9—a section whose provisions, when compared with somewhat similar provisions contained in the Public Health Act, 1936, frequently place local authorities in somewhat of a quandary, as will be illustrated in a subsequent article—and would not have had need to go under s. 11 at all).

There is, however, an alternative course open to those local authorities who, like the Corporation with whom the writer is employed, possess local Act powers which provide that "if the . . . officer of health . . . certify . . . that *any building or part of a building* . . . is unfit for human habitation, the Corporation may by their order . . . declare that the same is not fit for human habitation, and the same shall not after a date therein to be specified be inhabited, and after the date or time mentioned in such order no person shall let or occupy, or continue to let or occupy, or knowingly suffer to be occupied, such building or part of a building, and any person acting in contravention of . . . such order shall be liable to a penalty not exceeding £10, and an additional penalty of 40*s*. for every day during which he shall continue to act in contravention of such order . . . provided . . . that if at any time after such order . . . such building or part of a building has been rendered fit for human habitation [the Corporation] may revoke the said order . . ."; that alternative is, of course, to proceed under those powers, but there is a possible snag and that is in relation to the recovery of possession of the house by the owner thereof in order to comply with a closing order made under the local Act in respect of the whole of that house.

As was mentioned in the article "Council Houses and the Rent Restrictions Acts" (117 J.P.N. 90), nothing in the Rent Restrictions Acts "shall be deemed to . . . prevent possession being obtained . . . of any premises by any owner thereof in a case where an undertaking has been given under Part II of [the Housing] Act [1936] that those premises shall not be used for human habitation" or ". . . of any part of a building . . . by the owner thereof in a case where a closing order is in force in respect thereof"; unless, therefore, the local Act in question contains provisions of similar import (which the Act of the writer's local authority does not) the owner of the premises in respect of which "the local Act closing order" is made will be placed in an invidious position if those premises are controlled

by the Rent Restrictions Acts and he finds that he can only recover possession of them by providing the tenant with suitable similar accommodation. It is not an insurmountable difficulty, of course, as the local authority, although not legally bound to do so, might themselves be prepared to re-house the displaced tenant.

THE ENGLISH SPELL

" It is a pity " wrote Artemus Ward in 1867 " that Chawcer, who had geneyus, was so unedicated. He's the wuss speller I know of." Literary history repeats itself, and one at least of the small majority who voted for the second reading of the Simplified Spelling Bill has now attributed a similar ignorance to Dr. Samuel Johnson. Artemus Ward (who in real life was the American author Charles Farrar Browne) has at least the merit of intending to be funny and, if taken in small doses, is frequently successful in his aim. It would be interesting if we could have the comments of the Great Lexicographer on the allegation, made in all seriousness in the recent debate, that " Dr. Johnson distorted and tortured our language by latinizing its spelling in ludicrous ways ; he standardized English at the moment when it was most idiotic and alien to our language ". Johnson, born at Lichfield, was a Staffordshire man ; his traducer, who sits for a Staffordshire constituency and has had a distinguished academic career, ought to know better. " Your levellers " said the Doctor in 1763 " wish to level *down* as far as themselves ; but they cannot bear levelling *up* to themselves." Never was a truer word spoken of the fads and fallacies that now bedevil the educational system in this country and are rapidly making us a nation of illiterates.

The levellers have been among us for many years now, and in the economic sphere the levelling-down process has gone far. Taxation, death duties, compulsory acquisition of land, rent restriction and rationing have effected a redistribution of available resources, though the enormous increase in Government expenditure and the colossal rise in the cost of living render it difficult to say with certainty whether anybody is much better off at the end. Learning is the latest commodity to be rationed, and it cannot be said that the results are encouraging. We may perhaps be forgiven for quoting Johnson again : " Their learning is like bread in a besieged town : every man gets a little, but no man gets a full meal." This aphorism aptly sums up the effects of the recent Education Acts. Children must not be taught to think for themselves, lest it put an undue strain upon their minds ; cultivation of taste, thoughtful mastication and active assimilation of the mental *pabulum* available for them are no longer encouraged ; they must be fed only with predigested slops. Illustrated periodicals for those who cannot or will not read ; a continuous stream of broadcast and televised entertainment for those who have never learned the art of selection ; potted extracts and digests for those who are too lazy or too timorous to forage for themselves ; erotic dance-music and films for those whose emotions are under-developed, and " free activities " for the many who cannot be bothered to study—these are the unripe first-fruits of the new planting. Until recently, the richer, more mellow products of the tree of knowledge have not been beyond the reach of the few who have had the energy and application to climb adventurously upward in search of them, and those few have found their reward in the acquirement of a more discriminating taste, a broader outlook and a fuller cultural life. Now the levelling-down process is to be applied to them also ; simplified spelling is to be the order of the day ; debased language and corrupt pronunciation are to be reproduced in the printed word, and the standards that have governed the English tongue for two centuries are to be cast aside.

It is to be doubted whether the advocates of spelling reform have given much thought to the implications of the subject. Either the new methods are to be made universally compulsory, by Act of Parliament, or they are to be optional, in lower-grade schools and for backward pupils. If the former, then the vast treasures of English Literature will either have to be rewritten in the new, simplified form or must in due course become unintelligible to all but a few intrepid students of an extinct language. If, on the other hand, the new spelling is to be optional, confusion will be worse confounded. " Do you spell it with a V or a W ? " inquired the Judge of Mr. Weller. " That depends upon the taste and fancy of the speller, my Lord," replied Sam. It is bad enough, under the present system, to have to tolerate the barbarities of urban pronunciation—the distortion of vowels and diphthongs, the clipping of final consonants, and the ugly epiglottal stop in substitution for double d's and t's in the middle of many words—mannerisms which at once stamp the speaker as under-educated. Shaw has given an amusing *exposé* of these characteristics in *Pygmalion*, where his tilts at careless speech are by no means confined to what used to be called the " lower " classes. But up till now, at any rate, while cultivated standards of speech have been more honoured in the breach than in the observance, the written language has been standardized and made universally comprehensible to all who have learned to read. The vagaries of English spelling are proverbial, but they have nevertheless an etymological significance which is bound up with all that is best in our literary heritage. Phonetic spelling has a specious attraction so long as it is considered in theory alone ; but on what kinds of sounds will it be based ? " To-morrow night," with its redundant w and gh, may be difficult to associate, in print, with the " Ter-morrer noit " of the Cockney ; but how will it help him to spell it in the "simplified" form "Too-morro nite"? Worse still, is everything to depend upon " the taste and fancy of the speller," and is every man to be his own judge in inditing the written language, as he will undoubtedly continue to be in pronoucing the spoken word ?

The taunt has been levelled at English spelling that it resembles, in a remote way, the Chinese system of ideographs—that words have to be recognized by their general appearance and not by painstakingly assimilating each written syllable to the sound it represents. Be it so. But in China an educated native of Peking, while he may be unable to understand the speech of a Cantonese, shares with him a common system of writing and reading ; the symbols in which the language is expressed on paper are the same in every part of that vast country. In Britain, similarly, a man from the Scottish Lowlands may find it difficult or impossible to understand the spoken word of the Dorsetshire farmer or the London taxi-man, but all three share a written English which is standard throughout Great Britain. Take away this one remaining safeguard, and we shall have Babel indeed. Inconsistencies of pronunciation, no less than vagaries of spelling, are (colloquially speaking) " the devil " ; but to use one devil to cast out another is not a device likely, in this connexion, to succeed.

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Ferries (Acquisition by Local Authorities) Act, 1919.

The council acquired a ferry service with the consent of the Minister of Transport as provided by the above Act, and I shall be glad if you will kindly advise me whether they are required to continue to operate the service or whether they may dispose of it.

The reason for desiring to cease operating the service is the heavy loss which is incurred annually.

The origin of the ferry is not known although it is referred to in a deed dated 1735. PET.

Answer.

A ferry owner is under a duty at common law to keep his ferry in readiness and in good repair and if he fails to do so he is indictable and is liable to an action by any person who has suffered special damage.

He may, however, dispose of it by sale by deed or he may lease it but if he wants to abandon it, an Act of Parliament is required. In our opinion, these duties and liabilities apply to a local authority acquiring a ferry under the Act of 1919 ; *see* s. 1 (2) of that Act.

2.—Housing Act, 1936—*House occupied after demolition order or closing order—Receipt of rent.*

I should be grateful if you would advise me on the legal position following the making of (i) a demolition order by the council, or, (ii) a magistrate's closing order in respect of a dwelling-house.

1. Is the owner of the dwelling-house required to serve a notice to quit upon the tenant ?

2. If, as frequently happens by reason of lack of alternative accommodation, the tenant continues to occupy the house after the order has been made, is the owner entitled to continue receiving the rent ?

POP.

Answer.

In the case of a demolition order, the Act imposes on the council a duty to enforce demolition. It is for them to serve a notice under s. 155 of the Housing Act, 1936, and this power can be exercised in the case of a controlled house ; *see* s. 156 (1). In the case of a closing order, the owner incurs penalties under s. 14, and, for his own protection, may have to obtain possession by notice to quit and this power may be exercised in relation to a controlled house ; *see* s. 156 (1) (*e*). The penalties in the case of contravention of a closing order provided by s. 14 of the Act apply to both landlord and tenant.

In the case of a demolition order there is no such penalty, because the Act assumes that the council will do its duty.

3.—Husband and Wife—*Maintenance order—Allegation of subsequent adultery against husband—Insertion of non-cohabitation clause in order.*

In May, 1952, Mrs. H applied for and was granted a maintenance order against her husband on the grounds of his desertion. Since that date the husband has been cited as co-respondent in divorce proceedings on the grounds of adultery and the petitioner in these proceedings has been successful in obtaining a decree. Mrs. H now desires to apply to my justices for a separation order against her husband on the grounds of his adultery with the respondent in the divorce proceedings referred to. I shall be pleased if you will give your opinion as to whether my justices have power to entertain the application whilst the order for desertion is in force or whether Mrs. H should first apply for the order on desertion to be revoked and then apply for a new order on the grounds of her husband's adultery.

SAD.

Answer.

On the whole we advise Mrs. H to apply for variation of the existing order. If she had that order set aside and then failed to prove the adultery she would be left without an order, and it has to be remembered that proof of the finding against the respondent in the divorce proceedings alone would not be evidence against Mr. H.

In general, a non-cohabitation clause is not to be inserted in an order based on desertion or neglect to maintain, and the High Court has often struck out the clause on appeal, *see*, for example, *Smith* v. *Smith* (1931) 95 J.P.17, and cases cited below, but here the fresh evidence of adultery would seem to justify its insertion. Mrs. H should, however, be made to realize that such a non-cohabitation clause would put an end to the desertion, *Dodd* v. *Dodd* (1906) 70 J.P. 163 ; *Harriman* v. *Harriman* (1909) 73 J.P.193 ; *Robinson* v. *Robinson* [1919] P. 352 ; and stand in the way of divorce proceedings on that ground. We think that it would be permissible, though certainly unusual, for the justices to make a second order, containing the finding of adultery and including only a non-cohabitation clause, while leaving the original maintenance order in existence, but there may be inconveniences about having two separate orders in existence and we prefer the course we have suggested.

4.—Information Plaques.

The suggestion has been made to the county council that the council should provide and affix information plaques on buildings and sites of an historic nature in the county. Are you aware of any powers which would enable the county council to incur expenditure of this kind ? In the alternative, are you aware of any power which borough or district councils possess in the matter ? P.A.T.C.O.

Answer.

There would appear to be a power vested in the councils of counties and boroughs under ss. 11 and 21 of the Ancient Monuments Act, 1913, and s. 15 of the Act of 1931. Affixing the plaques with information would seem to be "managing" within s. 11 of the Act of 1913.

5.—Land Drainage Act, 1930—*Claim for Compensation.*

I would be glad to have your opinion as to the time within which a claim for compensation under s. 34 (3) of the Land Drainage Act, 1930, should be brought. P.L.D.

Answer.

The matter is in some doubt but it would appear to have been the intention of the legislature in s. 27 of the Limitation Act, 1939, that the limitation of time as to actions should apply to such an arbitration. The time would, therefore, be six years from the occurrence of the injury.

6.—Local Government Act, 1929—*Superannuation payments.*

The Superannuation Act, 1922, was adopted by this council to come into operation on April 1, 1937, for officers only. The Local Government Act, 1929, made county councils highway authorities and they delegated their functions to the district council. In August, 1938, the council decided to bring all their workmen under the 1937 Superannuation Act provided the county council accepted liability for the employer's cost of those workmen engaged on delegated duties, *viz.*, equivalent contributions and equal annual charge.

The clerk of the county council wrote on September 13, 1938 : "Your council may be assured that the county council will bear the employer's cost in connexion with the roadmen included in the scheme. As the men are the servants of the rural district council they should be included in that council's scheme." The rural district council belongs to a joint superannuation committee of local authorities. The resolution of the council to include "all classes" was passed on February 25, 1939, to come into operation on April 1, 1939. There was no obligation on the council to include these workmen and if the county council had not undertaken to be responsible for the employer's cost which included an equal annual charge for forty years they would not have been included in the scheme. The county council did in fact pay their equivalent contributions and the equal annual charge up to March 31, 1948, and they are continuing to meet the liability of pensions increases and increased statutory allowances.

As and from April 1, 1948, the district council at the request of the county council relinquished their delegated powers and the men engaged on road works were transferred to the county council and included in the county council superannuation scheme. The county council have refused to pay the equal annual charge since April 1, 1948, the county treasurer saying that he cannot find any statutory authority which requires a county council to make a payment in respect of equal annual charge in respect of transferred highways workers following cessation of delegation and that the tendency of recent legislation appears to be framed on the basis that the continuing superannuation payments are left with the transferring authority. A transfer value has been paid to the county council in respect of transferred workers.

The clerk of the county council wrote on January 25, 1950, as follows :

"I have considered with the county treasurer very carefully your letter about the county council's obligations to continue paying equal annual charges in respect of transferred highway staff. I regret I am compelled to reject your claim as there would appear to be no legal authority to allow such payments, nor can I accept the contention which some district councils have put forward that there is an equitable or moral obligation (which is, of course, insufficient authority) to allow them. I agree that upon the delegation of the

highway functions the county council in the relationship of principal and agent undertook to meet all the employers' costs in respect of the highway staff so long as the delegation continued in force. Any highway staff remained legally the district council's employees and the county council's obligations were merely full reimbursement of approved annual expenditure. The withdrawal of the delegated functions terminated the agency and caused the deferred statutory transfer of the highway staff under s. 120 of the Local Government Act, 1929, to take effect. It follows accordingly that the position must be regulated by that Act and any relief in respect of equal annual charges obtained under s. 125 (2) (*b*). I do not think that the agency agreement with the district councils could have contemplated otherwise, nor could the county council undertake to pay a sum which upon the transfer of the staff should apparently cease. For the reasons stated above I am obliged to advise the county treasurer that there is no authority to make the payments requested."

Section 117 of the Local Government Act, 1929, deals with the transfer of road properties and liabilities. Section 120 of the Local Government Act, 1929, deals with the transfer of road officers. Section 125 of the Local Government Act, 1929, deals with the superannuation of transferred road officers. Section 134 of the Local Government Act, 1929, defines property and liabilities as having the same meaning as in the Local Government Act, 1888. The expression "liabilities" includes all debts and liabilities to which any authority would but for this Act be liable or subject to, whether accrued at the date of the transfer or subsequently accruing.

Will you please advise (1) whether the rural district council can substantiate their claim that the county council as principals must meet the liabilities of their agents which they authorized them to incur on their behalf. (2) If the county council is liable how should the district council proceed to recover. PAST.

Answer.

1. We agree with the contentions of the county council and for the reasons given.

2. This strictly does not now arise but any dispute may be referred to the Minister of Housing and Local Government under s. 126 of the Local Government Act, 1929.

7.—Local Government Superannuation Scheme, 1937—*Superannuation of Servants—s.* 3 (2) (*b*).

Consideration is being given to the superannuation of servants under s. 3 (2) (*b*) of the above Act.

A number of the council's existing servants have indicated that they do not wish to be included in the scheme, and I am endeavouring to ascertain whether these servants can be omitted by the wording of any statutory resolution which may be passed.

I am enclosing a copy of a draft resolution which I understand is used by many local authorities as their statutory resolution bringing their servants into superannuation schemes. It is obvious that the object of this resolution is to entitle all servants of the authority to participate in the superannuation scheme, with the exception of those servants whose employment is of a temporary nature. It is realized, too, that the resolution could be slightly amended to provide that only established servants employed on a particular service should be included. I understand that some authorities have used this resolution but have omitted B III of the definition.

If B III is omitted it can quite easily be seen that servants, apart from those included in B II of the definition can be included or excluded from the scheme according to the wish of the council, by an ordinary resolution being passed. Thus the council can by an ordinary resolution resolve that George Brown shall be an established servant and therefore entitled to the benefits of the superannuation, whilst Tom Smith shall not.

I shall be obliged to have your opinion on the following points :

1. Do you consider that the enclosed draft statutory resolution meets the provisions of s. 3 (2) (*b*) of the Act ?

2. Do you consider that the draft would meet the provisions of s. 3 (2) (*b*) if B III of the resolution was omitted therefrom ?

3. Is it possible to word a statutory resolution so as to leave out some servants and include others even though they are employed in the same work ?

4. Can a statutory resolution passed under s. 3 (2) (*b*) be rescinded either in whole or in part ? P.S.S.

Answer.

1. No. The established servants to whom the statutory resolution applies should appear in the statutory resolution.

2. Yes, if (1) above is complied with.

3. No.

4. It cannot be rescinded but a further resolution closing further entry to servants of any class or description could be passed. Those already in, however, cannot be affected. The entry could also be extended by a further resolution.

8.—Magistrates—*Practice and procedure—Case Stated.*

Who is responsible for preparation of the case, the appellant's solicitor or the clerk to justices ? JILDI.

Answer.

It is the duty of the justices to state the case, *see* the observations of Lord Goddard, C.J., in *Roberts* v. *Evans*, reported (1949) W.N.53. It is, however, common practice for the appellant to prepare a draft of the case and to submit his draft to the other party, and that draft is then sent to the magistrates who are responsible for the final form of the case. The appellant is quite entitled to refuse to do anything in the matter and to leave the statement of the case to the justices.

9.—Town and Country Planning Act, 1947, s. 33.

I would be glad to know whether you consider that s. 33 of the Town and Country Planning Act, 1947, which authorizes the local planning authority to take steps to abate serious injury to the amenities of an area which is caused by the condition of any garden, vacant site, or other open land in the area, is restricted to dealing with the effects of the natural condition of such garden, etc. My council are concerned about the extremely unsightly effect of scrap metal storage on certain land, in respect of which no action can be taken under s. 23 (service of enforcement notice) as the development was completed before July 1, 1948, and the time limit for the service of enforcement notice has now expired. Action may, of course, be taken under ss. 26 and 27 (powers relating to authorized uses), and in such case compensation would have to be paid to the developer.

It appears to me that my council may not proceed under s. 33, as the effect on this section appears to be limited to the neglect of, rather than active development on, gardens, etc. P. LUX.

Answer.

There appears to be some justification for the view put forward above but the procedure under the section as laid down by the Town and Country Planning (General) Regulations, 1948 (S.I. 1948, No. 1380) reg. 7, applying s. 23 (3)–(5) and s. 24 appears to contemplate a wider construction. That regulation, however, impliedly excludes any power to give a notice with respect to any condition of the land which results in the ordinary course of events from operations or a use for which permission was granted under Part III or, in our opinion, from operations or a use for which no enforcement action under s. 23 can now be taken.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

COUNTY BOROUGH OF SWANSEA

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor at a salary in accordance with Grade A.P.T. IX (£815 to £935) of the National Scheme of Conditions of Service.

Applicants should possess experience of advocacy.

The appointment, which will be terminable by one month's notice, is subject to the Local Government Superannuation Act, 1937, and the National Scheme of Conditions of Service as adopted by the Council. The successful candidate will be required to pass a medical examination.

The Corporation will make housing accommodation available, if required.

Applications, stating age, qualifications and experience, and giving the names of two persons to whom reference may be made, must be delivered to the undersigned not later than March 27, 1953.

Canvassing, either directly or indirectly, will be a disqualification.

T. B. BOWEN,
Town Clerk.

The Guildhall,
Swansea.

Amended Advertisement

FLINTSHIRE MAGISTRATES' COURTS COMMITTEE

Appointment of Justices' Clerk

APPLICATIONS are invited from Solicitors qualified in accordance with the Justices of the Peace Act, 1949, for the whole-time appointment of Clerk of the Justices for the County Petty Sessional Divisions of Mold, Hope, Hawarden, Northop, Holywell and Caerwys, with an approximate population of 80,500. The personal salary will be £1,550 per annum, rising by five annual increments of £50 to £1,800. The appointment will be superannuable in accordance with the above Act. The Clerk appointed will be required to take up his duties by not later than July 1, 1953, or earlier if possible.

Application forms, and Conditions of Service, may be obtained from the undersigned, and the application, together with three recent original testimonials, returned by not later than April 8, 1953. Canvassing will disqualify.

W. HUGH JONES,
Clerk of the Magistrates' Courts Committee.

County Buildings,
Mold.
March 10, 1953.

CITY OF MANCHESTER

Appointment of Whole-time Male Probation Officer

APPLICATIONS are invited for the appointment of a Whole-time Male Probation Officer.

Applicants must not be less than twenty-three nor more than forty years of age, except in the case of a serving probation officer.

The appointment will be subject to the Probation Rules, 1949 to 1952, and the salary will be according to the scale prescribed by those Rules.

The successful applicant will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with not more than three recent testimonials, must reach the undersigned not later than March 31, 1953.

HAROLD COOPER,
Secretary of the Probation Committee.

City Magistrates' Court,
Manchester, 1.

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